

ORIGINAL

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CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re: AZHAR ABBAS SABIR

CASE NO.: SA 02-17904 RA

Debtor(s).

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 7/28/04

Time: 3:00

Location: Courtroom 6C at 411 E. Fourth Street, Santa Ana, California

Type of Sale: ☒ Public ☐ Private Last date to file objections: 7/14/04

Description of Property to be Sold: 17% Interest in partnership in real estate project known as El-Gindy Towers located in Egypt

Terms and Conditions of Sale: See Sale Notice

Proposed Sale Price: \$10,000.00

Overbid Procedure (If Any): See Notice

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Leonard M. Shulman
Marshack Shulman Hodges & Bastian LLP
26632 Towne Center Drive
Foothill Ranch, CA 92610
Tel: (949) 340-3400; Fax: (949) 340-30

Date: 6/30/04

Leonard M. Shulman – Bar No. 126349
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Attorneys for John M. Wolfe
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re	Case No. SA 02-17904 RA
AZHAR ABBAS SABIR,	Chapter 7
Debtor.	NOTICE OF CHAPTER 7 TRUSTEE'S MOTION FOR ORDER (1) AUTHORIZING SALE OF THE ESTATE'S PARTNERSHIP INTEREST IN THE EGYPT PROJECT KNOWN AS EL-GINDY TOWERS PURSUANT TO BANKRUPTCY CODE 363(b)(1); AND (2) APPROVING OF OVERBID PROCEDURES
	Date: July 28, 2004 Time: 3:00 p.m. Place: Courtroom 6C 411 E. Fourth Street Santa Ana, California

PLEASE TAKE NOTICE that on July 28, 2004, at 3:00 p.m. in Courtroom 6D of the above entitled Court located at 411 E. Fourth Street, Santa Ana, California, John M. Wolfe, Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Azhar Abbas Sabir ("Debtor") will bring a Motion For Order Authorizing Sale Of The Estate's Partnership Interest In The Egypt Project Known As El-Gindy Towers Pursuant To Bankruptcy Code 363(B)(1); And (2) Approving Of Overbid Procedures ("Sale Motion").

BACKGROUND INFORMATION

An Involuntary petition for relief under Chapter 7 of the Bankruptcy Code was filed against the Debtor on October 11, 2002 (the "Petition Date"). On or about November 20, 2002, the Court entered the Order for Relief in this case. John M. Wolfe is the duly appointed, qualified and acting Chapter 7 Trustee for the Debtor's Estate.

A. THE SUBJECT PARTNERSHIP INTEREST

In his Bankruptcy Schedules, the Debtor listed a 1/3 partnership interest in a real estate project known as El-Gindy Towers located in Egypt (the "Partnership Interest"). The Debtor listed the value of the Partnership Interest at \$500,000. However, as set forth below, the Trustee is advised that the value of the Partnership Interest may be substantially less.

At a Federal Rule of Bankruptcy Procedure 2004 examination, the Trustee is advised that the Debtor testified that

his Partnership Interest in the project has been reduced from a 1/3 interest to 17%. The Debtor further testified that the project known as El-Gindy Towers, consisting of a 12-story commercial/residential building, is unfinished. The Trustee is advised that no work has been completed on the project for a couple of years and that the other partners of have been attempting to sell the project for a couple of years, but there have been no buyers. Thus, it appears that the value of Debtor's Partnership Interest is substantially less than the Debtor had listed in his Bankruptcy Schedules.

The Debtor listed no liens or encumbrances against the Partnership Interest in his Bankruptcy Schedules.

B. TERMS OF THE SALE

The Trustee has received an offer through Andrew Alper from Dan Bailey ("Buyer") to purchase the Estate's interest in the Partnership Interest for \$10,000.

The essential terms can be summarized as follows:

- a. The sale price is \$10,000 ("Purchase Price").
- b. The Buyer understand that the sale is "as is", thus the Trustee is not making any representation, warranties, either express or implied as to the Partnership Interest's condition, uses (prior, present and future), or otherwise. Moreover, Buyer is expressly aware and fully informed that the Trustee is selling the Partnership Interest in his capacity as Trustee for the Estate with no liability to the Trustee personally. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to immediately upon demand return any money paid to the Trustee by the Buyer, without deduction. All other liability of the Trustee, or his agents or attorneys, shall be released.
- c. Although the Debtor has listed no liens or encumbrances against the Partnership Interest, out of an abundance of caution, the Trustee will sell the Estate's interest in the Partnership Interest free and clear of all liens and encumbrances, with liens and encumbrances, if any, to attach to the sale proceeds in the same validity and priority as prior to the sale.
- d. This sale is subject to overbid and expressly conditioned on approval of the United States Bankruptcy Court for the Central District of California, Santa Ana Division.
- e. The sell is scheduled to close thirty days after the Bankruptcy Court approves the sale of the Estate's interest in the Partnership Interest.

The proposed sale has been brought in good faith and has been negotiated on an "arms length" basis. The negotiations with the Buyer has resulted in an offer to sell the Estate's interest in the Partnership Interest that will have substantial benefit. Accordingly, the sale is in good faith and should be approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

If the Trustee is unable to complete the sale for any unknown reasons, the Buyer's sole damages shall be limited to the refund of any money paid to the Trustee by the Buyer, without deduction.

C. OVERBID PROCEDURE

The sale contemplated by the Trustee will be subject to the following overbid procedures:

- a. Potential overbidders must bid an initial amount of at least One Thousand Five Hundred Dollars (\$1,500.00) over the Purchase Price offered by the Buyer. Minimum bid increments thereafter shall also be One Thousand Dollars (\$1,000.00).
- b. Overbids must be in writing and be received by the Trustee's counsel, Marshack Shulman Hodges & Bastian LLP to the attention of Leonard M. Shulman by no later than three (3) days prior to the hearing on the motion to the Bankruptcy Court seeking approval of this Agreement.
- c. Overbids must be accompanied by certified funds in an amount equal to ten percent (10%) of the overbid purchase price.
- d. The overbidder must seek to acquire the Partnership Interest on terms and conditions not less favorable to the Debtor's bankruptcy estate than the terms and conditions to which the Buyer has agreed to purchase the Partnership Interest. Any competing bidder must be obligated to perform within the same time that the Buyer would be obligated to perform under the Purchase Agreement and its attachments.
- e. If overbids are received, the final bidding round shall be held concurrent with the Bankruptcy Court hearing on this Sale Motion in order to allow all potential bidders the opportunity to overbid and purchase the Partnership Interest.
- f. The overbidder's deposit shall be refunded within five (5) days of the final bidding round in the event that said overbidder is outbid.

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D. ESTIMATED PROCEEDS FROM THE SALE

The Trustee anticipates that the sale will generate net funds for the Bankruptcy Estate in the amount of \$10,000. Because this sale is subject to overbids, the estimated net to the Estate will increase if the sale is confirmed to an overbidder.

MEMORANDUM OF POINTS AND AUTHORITIES

I. COURT MAY AUTHORIZE THE SALE OF THE PARTNERSHIP INTEREST WHEN THERE IS A GOOD FAITH PURCHASER

The Trustee, after notice and hearing, may sell Partnership Interest of the estate. Bankruptcy Code Section 363(b). The proponent of the sale must establish that there is a sound business purpose for the sale, that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that there is accurate and reasonable notice to creditors and that the sale is made in good faith. In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); In re Lionel Corp., 722 F.2d 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale to one of very few serious bidders where an asset has been extensively shopped and a delay could jeopardize the transaction. See, e.g., In re Crowthers McCall Pattner, Inc., 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's proposed sale of Partnership Interest meets the foregoing criteria.

A. SOUND BUSINESS PURPOSE

The Ninth Circuit in In re Walter, 83 B.R. 14 (Bankr. 9th Cir. 1988) has adopted a flexible, case by case test to determine whether the business purpose for a proposed sale justifies disposition of Partnership Interest of the estate under Section 363(b). In Walter, the Ninth Circuit, adopting the reasoning of the Fifth Circuit in In re Continental Air Lines, Inc., 780 F.2d 1223 (5th Cir. 1986), and the Second Circuit in In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983), set forth the following standard to be applied under Bankruptcy Code Section 363(b).

Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in Lionel, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the assets to the estate as a whole, the amount of lapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the Partnership Interest, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasingly or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

Walter, supra, at 19-20 [quoting In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986)].

In the present case, there is a sound business purpose for the sale. The sale as proposed will provide net for the Estate of approximately \$10,000. The Trustee believes that the sale pursuant to this Sale Motion will be at fair market value because it is the highest offer that the Estate has received thus far and it will yield sufficient equity to make the sale. The Estate is expected to net more should there be overbids at the time of the hearing. On the other hand, if the sale is not approved, the Estate will not realize any funds and thus there will be no funds to distribute to the Estate's creditors. Therefore, the Trustee respectfully submits that, if this Court applies the good business reason standard suggested by the Second Circuit in Lionel, the Sale Motion should be approved.

B. THE SALE SERVES THE BEST INTERESTS OF THE ESTATE AND CREDITORS

The benefits to the Estate, as set forth above, will be substantial. The Trustee has made a business decision that it is in the best interest of the creditors of this Estate that this Sale Motion be approved. If the sale is approved, there will be a net equity of approximately \$10,000 in cash, which is much more than what the Estate would have if the sale is not approved. Accordingly, it would be in the best interest of the Estate if the sale is approved.

C. ACCURATE AND REASONABLE NOTICE

It is expected that notice of this Sale Motion will satisfy the requirements for accurate and reasonable notice and will be appropriate under the circumstances.

The Trustee shall provide notice of the proposed sale of the Partnership Interest to the parties. The Notice of this Sale Motion will include a summary of the terms and conditions of the proposed sale, overbid procedures, the time fixed for filing objections, and a general description of the Partnership Interest. The Trustee submits that the notice requirements will have been satisfied, thereby allowing creditors and parties in interest an opportunity to object to the sale. Hence, no further

notice should be necessary.

D. THE SALE IS MADE IN GOOD FAITH

The proposed sale has been brought in good faith and has been negotiated on an "arms length" basis. The court in Wilde Horse Enterprises, set forth the factors in considering whether a transaction is in good faith. The court stated:

"Good faith" encompasses fair value, and further speaks to the integrity of the transaction. Typical 'bad faith' or misconduct, would include collusion between the seller and buyer, or any attempt to take unfair advantage of other potential purchasers. . . . And, with respect to making such determinations, the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale. (citations omitted)

Id. at 842.

In the present case, the negotiation of the proposed sale was an arms-length transaction. The negotiations with the Buyer has resulted in an offer to sell the Partnership Interest that will have substantial benefit. As set forth in the Notice of the Sale Motion, the creditors will have been provided with sufficient notice of the sale. Accordingly, the sale is in good faith and should be approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

**II. SALE OF THE PARTNERSHIP INTEREST FREE AND CLEAR OF LIENS
AND ENCUMBRANCES SHOULD BE PERMITTED**

Bankruptcy Code Section 363(f) allows a trustee to sell Partnership Interest of the bankruptcy estate "free and clear of any interest in such Partnership Interest of an entity," if any one of the following five conditions is met:

- (1) applicable non-bankruptcy law permits a sale of such Partnership Interest free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such Partnership Interest is to be sold is greater than the aggregate value of all liens on such Partnership Interest;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

Bankruptcy Code Section 363(f).

Section 363(f) is written in the disjunctive and thus only one of the enumerated conditions needs to be satisfied for Court approval to be appropriate. The Trustee believes that several of these factors are satisfied by the proposed sale.

Since there are no encumbrances on the Partnership Interest, the sale price of \$10,000 satisfies section 363(f)(3). Alternatively, the Trustee proposes to sell the Partnership Interest pursuant to Section 363(f)(2). Accordingly, the Court should approve the Sale free and clear of all liens or with liens to attach to the sale proceeds in the same validity and priority as prior to the sale.

**III. THE BANKRUPTCY COURT HAS THE AUTHORITY TO
APPROVE THE BIDDING PROCEDURES**

Implementation of the bidding procedures is an action outside of the ordinary course of the business. Bankruptcy Code Section 363(b)(1) provides that a trustee "after notice and hearing, may use, sell or lease, other than in the ordinary course of business, Partnership Interest of the estate." Furthermore, under Bankruptcy Code Section 105(a), "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this Court may authorize the implementation of overbidding procedures.

The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a bankruptcy court to issue orders determining the terms and conditions for overbids with respect to a sale of estate assets. In re Crown Corporation, 679 F.2d 774 (9th Cir. 1982). The Crown Corporation court entered an order specifying the minimum consideration required for an overbid as well as the particular contractual terms required to be offered by overbidders. Id. at 777. The Crown

Corporation decision also approves of an order requiring and setting the amount of potential overbidder's deposits and authorized courts to determine the disposition of such deposits. Id. While the discussion is not extensive, the Crown Corporation decision recognizes the authority of bankruptcy courts to order the implementation of bidding procedures such as those proposed in the present case. Accordingly, the Trustee respectfully requests that the Court authorize the overbidding procedure as set forth above.

E. **THE PROPOSED PROCEDURES ARE UNTAINTED BY SELF-DEALING**

The proposed overbid procedures have been brought in good faith and have been developed on an "arms length" basis. There is no prospective taint in dealings between the Trustee and the Buyer.

F. **THE PROPOSED PROCEDURES ENCOURAGE BIDDING AND ARE FAIR IN AMOUNT**

The overbid procedure is designed to encourage, not hamper bidding and is reasonable under the circumstances. These sale procedures are intended to provide potential overbidders with adequate information to make an informed decision as to the amount of their bid.

G. **THE PROPOSED BIDDING PROCEDURES ARE FAIR, REASONABLE AND SERVE THE BEST INTERESTS OF THE DEBTOR'S BANKRUPTCY ESTATE**

The proposed bidding procedures serve the Estate in several ways. First, the procedures themselves are fair, reasonable and productive; they will permit the Trustee to conduct an orderly sale and obtain the best possible price on the best possible terms for the Partnership Interest. Second, the bidding procedure will ensure that all bids will be comparable and on the same terms and conditions as those offered by the Buyer. If competing bids are received, the Trustee will determine which bid is the highest and best for the Estate. The comparability requirement of the bidding procedure will make it possible to accomplish this task.

The bidding procedures will also help the Trustee obtain the highest and best possible price for the Partnership Interest. The procedure institutes minimum overbid increments which the Trustee believes are reasonable. Thus, if competing bids are received, the Trustee will be able to obtain substantial benefit for this Estate from the sale. The bidding procedure requires that potential bidders demonstrate their capacity to complete the transaction. It would be a serious loss to the Bankruptcy Estate if it surrendered its opportunity to sell the Partnership Interest to the Buyer in favor of a competing bidder only to discover the bidder incapable of consummating the transaction. Thus, requiring bidders to pay a deposit by cashier's check or other certified funds and to bring a pre-approved letter from a bank prior to participating in the sale will protect the Estate from such a risk.

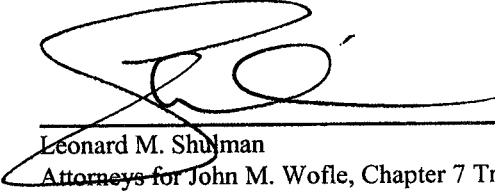
The most important benefit of the bidding procedure to the Estate is that their implementation will enable the consummation of the proposed sale. The proposed sale will be best way to obtain the maximum and most expedient recovery for creditors of this Estate. The Trustee submits that implementation of the bidding procedure is an essential component of consummating the sale.

Requests for a copy of the Sale Motion should be in writing and directed to Leonard M. Shulman of Marshack Shulman Hodges & Bastian LLP at the address indicated above.

PLEASE TAKE FURTHER NOTICE, that any response, opposition or joiner as to the proposed Sale Motion must be in the form as required by Local Bankruptcy Rule 9013-1(a)(7) and filed with the Clerk of the above-entitled Court no later than fourteen (14) days before the date of the above-referenced hearing and a copy served on Marshack Shulman Hodges & Bastian LLP to the attention of Leonard M. Shulman at the address indicated above and the Office of the United States Trustee, Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth Street, Suite 9041, Santa Ana, California 92701-8000. Failure to timely respond may be deemed as acceptance of the proposed Sale Motion. SEE LOCAL BANKRUPTCY RULES 9013-1(a)(7) AND 9013-1(a)(11).

Dated: June 30, 2004

MARSHACK SHULMAN HODGES & BASTIAN LLP



Leonard M. Shulman
Attorneys for John M. Wofle, Chapter 7 Trustee for the
Bankruptcy Estate of Azhar Abbas Sabir

CERTIFICATE RE NOTICE

The undersigned Attorney hereby certifies that:

1. The Entities served as set forth in the annexed Proof of Service are all of the entities required by applicable law to be served with the pleading referred to therein; and
2. The names and addresses of such entities set forth in the annexed Proof of Service are their correct names and addresses according to the records of the United States Bankruptcy Court for the case specified below in which such Proof of Service is to be filed.

The undersigned hereby acknowledges that this Certificate Re Notice is filed in compliance with Federal Rule of Bankruptcy Procedure 9011(a) and may be relied upon by the Bankruptcy Court for the purpose of determining whether each pleading which is subject of such Proof of Service has been properly served.

Dated: June 30, 2004



Leonard M. Shulman

Case Name: AZHAR ABBAS SABIR
Case No.: SA 02-17904 RA
Adversary No.: N/A
Date and Time of Hearing: JULY 28, 2004 @ 3:00 P.M.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610.

On June 30, 2004, I served the documents named below on the parties as follows:

**DOCUMENT(S) SERVED: NOTICE OF CHAPTER 7 TRUSTEE'S MOTION FOR ORDER (1)
AUTHORIZING SALE OF THE ESTATE'S PARTNERSHIP INTEREST IN THE
EGYPT PROJECT KNOWN AS EL-GINDY TOWERS PURSUANT TO
BANKRUPTCY CODE 363(b)(1); AND (2) APPROVING OF OVERBID
PROCEDURES**

**SERVED UPON: THE PARTIES AS REQUIRED BY LOCAL BANKRUPTCY RULE 2014-1 AS
SHOWN ON THE ATTACHED LIST**

X (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY FACSIMILE) Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list. The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error.

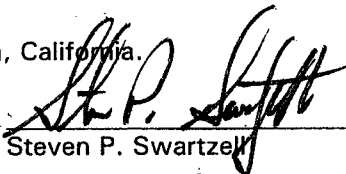
(BY FEDERAL EXPRESS OR AIRBORNE EXPRESS) I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by such overnight delivery company for overnight delivery.

(BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by ASAP Corporate Service to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on June 30, 2004, at Foothill Ranch, California.



Steven P. Swartzel